

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CESAR ALEJANDRO MARTINEZ,

Plaintiff,

v.

MARTIN BRANDON, et al.,

Defendants.

No. 2:22-cv-1161 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that police officers used excessive force, retaliated, and discriminated against him in violation of his constitutional rights. Presently before the court is plaintiff's motion to proceed in forma pauperis (ECF No. 2) and his complaint for screening (ECF No. 1). For the reasons set forth below, the court will grant the motion to proceed in forma pauperis and dismiss the complaint with leave to amend.

IN FORMA PAUPERIS

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). (ECF No. 2.) Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct

1 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and
2 forward it to the Clerk of the court. Thereafter, plaintiff will be obligated for monthly payments
3 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
4 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
5 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §
6 1915(b)(2).

7 SCREENING

8 I. Legal Standards

9 The court is required to screen complaints brought by prisoners seeking relief against a
10 governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §
11 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims
12 that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
13 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
14 U.S.C. § 1915A(b)(1) & (2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
17 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
18 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
19 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
20 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.
21 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
22 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
23 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell
24 AtlanticCorp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
25 (1957)).

26 However, in order to survive dismissal for failure to state a claim a complaint must
27 contain more than "a formulaic recitation of the elements of a cause of action;" it must contain
28 factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic,

1 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
2 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
3 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all
4 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

5 The Civil Rights Act under which this action was filed provides as follows:

6 Every person who, under color of [state law] . . . subjects, or causes
7 to be subjected, any citizen of the United States . . . to the deprivation
8 of any rights, privileges, or immunities secured by the Constitution .
. . shall be liable to the party injured in an action at law, suit in equity,
or other proper proceeding for redress.

9 42 U.S.C. § 1983. Here, the defendants must act under color of federal law. Bivens, 403 U.S. at
10 389. The statute requires that there be an actual connection or link between the
11 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
12 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
13 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
14 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or
15 omits to perform an act which he is legally required to do that causes the deprivation of which
16 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

17 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
18 their employees under a theory of respondeat superior and, therefore, when a named defendant
19 holds a supervisorial position, the causal link between him and the claimed constitutional
20 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
21 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations
22 concerning the involvement of official personnel in civil rights violations are not sufficient. See
23 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 **I. Allegations in the Complaint**

25 Plaintiff alleges the events giving rise to the claim occurred while he was incarcerated at
26 the Sutter County Jail in Yuba City, California. (ECF No. 1 at 1.) Plaintiff has identified the
27 following defendants: (1) Martin Brandon, police officer at the Yuba City Police Department; (2)
28 Castillo, guard at the Sutter County Jail; (3) “other officers” at the Yuba City Police Department;

1 and (4) “Sutter County Jail Officers.” (Id. at 2.) The court will discuss whether the allegations in
2 the complaint are sufficient to state a claim as set forth below.

3 **II. Does Plaintiff State a Claim under § 1983?**

4 **A. Excessive Force**

5 Plaintiff alleges that he put his hands on his head, then “they” grabbed his head and
6 slammed it to the pavement. (ECF No. 1 at 3.) Then, they hit him in the back without
7 justification. Plaintiff further states, “I think their [sic] racist. I’m Mexican-American. Theres [sic]
8 no need for that. They’ve been caught under oath lying second to last case. Sutter County Jail
9 never brought me information with their supposed investigation.” (Id.) Plaintiff claims he was
10 arrested because the officer had a scratch on his hand that he received “from assaulting [plaintiff]
11 pretty much.” Plaintiff states that as a result of the incident his right arm was injured.

12 The Fourth Amendment protects individuals from the use of excessive force by law
13 enforcement officials “in the course of an arrest, investigatory stop, or other ‘seizure’ of a free
14 citizen[.]” Graham v. Connor, 490 U.S. 386, 395 (1989). Excessive force claims “are analyzed
15 under the objective reasonableness standard of the Fourth Amendment.” Blanford v. Sacramento
16 County, 406 F.3d 1110, 1115 (9th Cir. 2005). Under this standard the court is required to
17 “balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests
18 against the importance of the governmental interests alleged to justify the intrusion.” Tennessee
19 v. Garner, 471 U.S. 1, 8 (1985) (quoting United States v. Place, 462 U.S. 696, 703 (1983)).
20 “Force is excessive when it is greater than is reasonable under the circumstances.” Santos v.
21 Gates, 287 F.3d 846, 854 (9th Cir. 2002) (citing Graham, 490 U.S. 386).

22 To state a claim for relief under § 1983, plaintiff must state facts explaining how each of
23 the identified defendant caused the deprivation of his rights. Leer v. Murphy, 844 F.2d 628, 634
24 (9th Cir. 1988). Plaintiff has alleged that he had placed his hands on his head when “they”
25 grabbed his head and slammed it into the pavement. (ECF No. 1 at 3.) Such an allegation would
26 be sufficient to state an excessive force claim. However, plaintiff has not identified which
27 defendant took such action. In any amended complaint, plaintiff must identify which defendant
28 used excessive force against him.

1 **B. Retaliation**

2 Plaintiff states that “they give everyone threats of writeups for speaking to themselves
3 threw the intercom . . . talking when I talk to make me mad.” (Id. at 4.) He states that officers
4 only allow inmates two grievances per month. He further states that ‘[t]hey only allow two an
5 [sic] month and then aggravate [sic] you when they know you’ve made yours.” (Id.) He states that
6 an officer who brought him to Delano making false statements about him to prison staff. Plaintiff
7 appears to allege that all inmates who used the grievance system received disciplinary writeups.

8 “[A] viable claim of First Amendment retaliation entails five basic elements: (1) An
9 assertion that a state actor took some adverse action against an inmate (2) because of (3) that
10 prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First
11 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.”
12 Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote and citations omitted).

13 This standard is applicable to pretrial detainees. Edmundson v. Flathead Cty. Sheriff Dept., 654
14 Fed.Appx. 264 (9th Cir. 2016); Williams v. Madrid, 609 Fed.Appx. 421 (9th Cir. 2015).

15 Plaintiff may be able to state a retaliation claim based on his allegation that jail staff
16 would issue disciplinary writeups to inmates who filed grievances. However, as with his
17 excessive force claim, he has not identified which defendant took such adverse action against
18 him. In order to state a claim, he must connect an identified defendant to the alleged violation of
19 his rights.

20 **C. Discrimination**

21 Plaintiff states that he was assaulted then punished. (ECF No. 1 at 5.) He also states he
22 was not allowed to file charges. He claims sergeant Olson told plaintiff that plaintiff assaulted
23 Olsen. Plaintiff also alleges that Castillo did not allow him to file charges. He further alleges he
24 was not allowed to file charges on an “assault by white racist.” (Id.) He states, “Guard Castillo
25 covering it up for himself another racist guard there. Discriminated myself. Awful occurrence
26 dn’t wnt [sic] this to happen to inmates . . .” (Id.)

27 The Equal Protection Clause requires that persons who are similarly situated be treated
28 alike. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985); Hartmann v. Calif.

1 Dept. of Corrs. and Rehab., 707 F.3d 1114, 1123 (9th Cir. 2013); Furnace v. Sullivan, 705 F.3d
2 1021, 1030 (9th Cir. 2013); Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). Inmates retain
3 a right to equal protection of the laws guaranteed by the Fourteenth Amendment. Walker v.
4 Gomez, 370 F.3d 969, 974 (9th Cir. 2004) (citing Lee v. Washington, 390 U.S. 333, 334 (1968)).
5 An equal protection claim may be established by showing that defendants intentionally
6 discriminated against plaintiff based on his membership in a protected class, Hartmann, 707 F.3d
7 at 1123, or that similarly situated individuals were intentionally treated differently without a
8 rational relationship to a legitimate state purpose, Engquist v. Oregon Dept. of Agriculture, 553
9 U.S. 591, 601-02 (2008).

10 It is not clear whether plaintiff seeks to challenge the use of force by law enforcement, or
11 the disparate treatment based on race, or both. Plaintiff may state a claim based on such
12 allegations. However, the complaint lacks sufficient factual specificity. As set forth above,
13 plaintiff must state facts showing what happened and identify the specific defendants involved.
14 Additionally, to state an equal protection claim, plaintiff must state facts showing that he was
15 treated differently because of his membership in a protected class.

AMENDING THE COMPLAINT

17 As set forth above, the complaint does not state a claim. However, plaintiff will be given
18 the opportunity to submit an amended complaint. Plaintiff is advised that in an amended
19 complaint he must clearly identify each defendant and the action that defendant took that violated
20 his constitutional rights. The court is not required to review exhibits to determine what plaintiff's
21 charging allegations are as to each named defendant. The charging allegations must be set forth
22 in the amended complaint, so defendants have fair notice of the claims plaintiff is presenting.
23 That said, plaintiff need not provide every detailed fact in support of his claims. Rather, plaintiff
24 should provide a short, plain statement of each claim. See Fed. R. Civ. P. 8(a).

25 Any amended complaint must show the federal court has jurisdiction, the action is brought
26 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must
27 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
28 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.

Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation).

4 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.
5 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed.
6 R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
7 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any heightened pleading standard in cases other than those governed by Rule 9(b)’’); Fed. R. Civ. P. 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8.

15 An amended complaint must be complete in itself without reference to any prior pleading.
16 E.D. Cal. R. 220. Once plaintiff files an amended complaint, all prior pleadings are superseded.
17 Any amended complaint should contain all of the allegations related to his claim in this action. If
18 plaintiff wishes to pursue his claims against the defendant, they must be set forth in the amended
19 complaint.

20 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and
21 has evidentiary support for his allegations, and for violation of this rule the court may impose
22 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

CONCLUSION

24 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) is granted.

25 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff

26 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §

27 1915(b)(1). All fees shall be collected and paid in accordance with this court's order

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1 to the Director of the California Department of Corrections and Rehabilitation filed
2 concurrently herewith.

3 3. Plaintiff's complaint (ECF No. 1) is dismissed with leave to amend.
4 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
5 complaint that complies with the requirements of the Civil Rights Act, the Federal
6 Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint
7 must bear the docket number assigned to this case and must be labeled "First
8 Amended Complaint."
9 5. Failure to comply with this order will result in a recommendation that this action be
10 dismissed.

11 Dated: October 20, 2022

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15 DEBORAH BARNES
16 UNITED STATES MAGISTRATE JUDGE
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20 DB/DB Prisoner Inbox/Civil Rights/S/mart1161.scrn
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